

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

**IN THE MATTER OF:**

**CITY OF NEW ALBIN  
NPDES Permit #00370001**

**ADMINISTRATIVE CONSENT ORDER**

**NO. 201~~6~~WW-27**

**TO:** City of New Albin  
P.O. Box 14  
New Albin, IA 52160

**I. SUMMARY**

This administrative consent order ("Order") is entered into between the City of New Albin ("New Albin") and the Iowa Department of Natural Resources ("DNR") for the purpose of achieving compliance with effluent limits in New Albin's National Pollutant Discharge Elimination System ("NPDES") permit. Pursuant to this Order, New Albin shall comply with the schedule contained herein.

Any questions regarding this Order should be directed to:

**Relating to technical requirements:**

Amber Sauser  
Field Office 1  
Iowa Department of Natural Resources  
909 W. Main St., Suite 4  
Manchester, Iowa 52057  
Ph. 563-927-2640

**Relating to legal requirements:**

John Crotty  
Legal Services Bureau  
Iowa Department of Natural Resources  
502 E. 9<sup>th</sup> Street  
Des Moines, Iowa 50319-0034  
Ph. 515-725-8249

**II. JURISDICTION**

This Order is issued pursuant to Iowa Code 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 and the rules adopted or permits issued pursuant thereto.

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**III. STATEMENT OF FACTS**

1. On January 31, 2012, DNR sent a letter to New Albin notifying the city that it violated NPDES permit limits for pH in 2011.

2. On February 25, 2013, New Albin submitted a report to DNR noting that pH violations were likely being caused by problems with the polishing pond at the end of the city's wastewater treatment process.

3. In July of 2013, New Albin's engineering firm, Davy Engineering, held a project initiation meeting with DNR to discuss improvements needed at the New Albin wastewater treatment plant. Davy Engineering began contacting DNR to discuss floodplain permits, wetland reclamation, and similar issues because land owned by the State of Iowa and State of Minnesota abuts the New Albin wastewater treatment plant property. Davy Engineering kept DNR apprised of the work being done to remedy these issues. Due to these extenuating circumstances, DNR relaxed its expected timeline for completing the project, provided the project continued to move forward.

4. On April 27, 2015, DNR sent a letter to New Albin notifying the city that it violated NPDES permit limits for pH in 2014. New Albin responded with a letter dated May 7, 2015, which noted that the city had recently completed a facility plan for a new wastewater treatment plant and expected the plant to be operational in 2017. DNR approved New Albin's facility plan for a new oxidation ditch wastewater treatment plant on November 3, 2015.

5. On February 5, 2016, New Albin notified DNR that it no longer wished to pursue construction of an oxidation ditch. The city instead favored evaluating the feasibility of constructing an algae wheel.

6. On March 14, 2016, New Albin submitted an application for Disadvantaged Community status based on the estimated costs of constructing an oxidation ditch. DNR approved New Albin's application and designated the city as a Disadvantaged Community on April 4, 2016. DNR's approval letter noted that the designation did not relieve New Albin of its duty to comply with existing pH permit limits.

7. On November 1, 2016, New Albin's engineering firm submitted a letter to DNR describing New Albin's plan to comply with its existing pH permit limits. New Albin plans to install an ultrasonic algae control unit in the polishing pond. New Albin believes the installation of this unit will control algae growth in the polishing pond, which will in turn improve pH in the city's effluent.

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**IV. CONCLUSIONS OF LAW**

DNR and New Albin agree that the following Conclusions of Law are applicable to this matter:

1. Iowa Code 455B.186 prohibits the discharge of pollutants into waters of the state, except for adequately treated pollutants discharged in accordance with rules adopted by the Environmental Protection Commission ("Commission").
2. Iowa Code 455B.173(3) authorizes and requires the Commission to promulgate rules relating to the operation of waste disposal systems, the discharge of pollutants into waters of the state, and the issuance of permits to waste disposal systems. The Commission has done so at 567 IAC chapters 60 through 69. Subrule 64.3(1) prohibits the operation of a waste disposal system without or contrary to the terms of a permit.
3. The facts stated in Section III of this Order constitute violations of Iowa Code 455B.186 and 567 IAC 64.3(1).

**V. ORDER**

Therefore, DNR orders and New Albin agrees to do the following:

1. By April 1, 2017, New Albin shall install and operate an ultrasonic algae control unit in the wastewater treatment plant polishing pond.
2. By November 1, 2017, New Albin shall submit a report to DNR Field Office 1 which details New Albin's compliance with pH permit limits since the date this Order was signed. The report shall evaluate whether the ultrasonic algae control unit is achieving its intended results.

**VI. PENALTY**

1. Iowa Code 455B.191 authorizes the assessment of civil penalties of up to \$5,000 per day of violation for the violations involved in this matter.
2. Iowa Code 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC chapter 10. DNR does not believe a penalty is appropriate in this case. New Albin has been designated as a Disadvantaged Community. Instead of a penalty for past noncompliance, the city's limited financial resources would be better spent evaluating options for a new wastewater treatment plant under the Disadvantaged Community rules which will bring the city into compliance going forward.

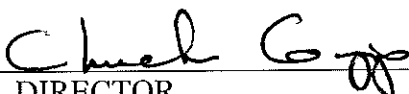
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**VII. WAIVER OF APPEAL RIGHTS**

Iowa Code 455B.175(1) and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of New Albin. By signing this Order, all rights to appeal this Order are waived.

**VIII. NONCOMPLIANCE**

Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code 455B.191.

  
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CHUCK GIPP, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 28<sup>th</sup> day of  
December 2016

  
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CITY OF NEW ALBIN  
MAYOR, Josh Dreps

Dated this 19 day of  
December, 2016

NPDES #00370001; Field Office #1; John Crotty; EPA; I.B.2.c